

# ANCTIONING REFERENCE POINTS

## INSTRUCTION MANUAL

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### Board of Nursing

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*Prepared for*

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March 2006



# COMMONWEALTH of VIRGINIA

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March 21, 2006

Dear Interested Parties:

In the spring of 2001, the Virginia Department of Health Professions approved a workplan to study sanctioning in disciplinary cases for Virginia's 13 health regulatory boards. The purpose of the study was to "...provide an empirical, systematic analysis of board sanctions for offenses".

Each board hears different types of cases, and considers different factors when determining an appropriate sanction. After interviewing Board of Nursing members and staff, a committee of Board members, staff and consultants conducted one of the most exhaustive statistical studies of sanctioned Nurses and Certified Nurse Aides in the United States. The analysis included collecting over 100 factors on all Board of Nursing and Certified Nurse Aide Registry sanctioned cases in Virginia over a 3 year period. These factors measured case seriousness, respondent characteristics, and prior disciplinary history. Using both the data and collective input from the Board of Nursing members and staff, analysts spent the past year developing a usable set of sanction worksheets as a way to implement the reference system.

Equally important to establishing a sanction, the system allows each respondent to be evaluated against a common set of factors—making sanctioning more predictable, providing an educational tool for new Board members, and neutralizing the possible influence of "inappropriate" factors (e.g., race, sex, attorney presence, identity of Board members). As a result, the following reference instruments should greatly benefit Board members, health professionals and the general public.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert A. Nebiker".

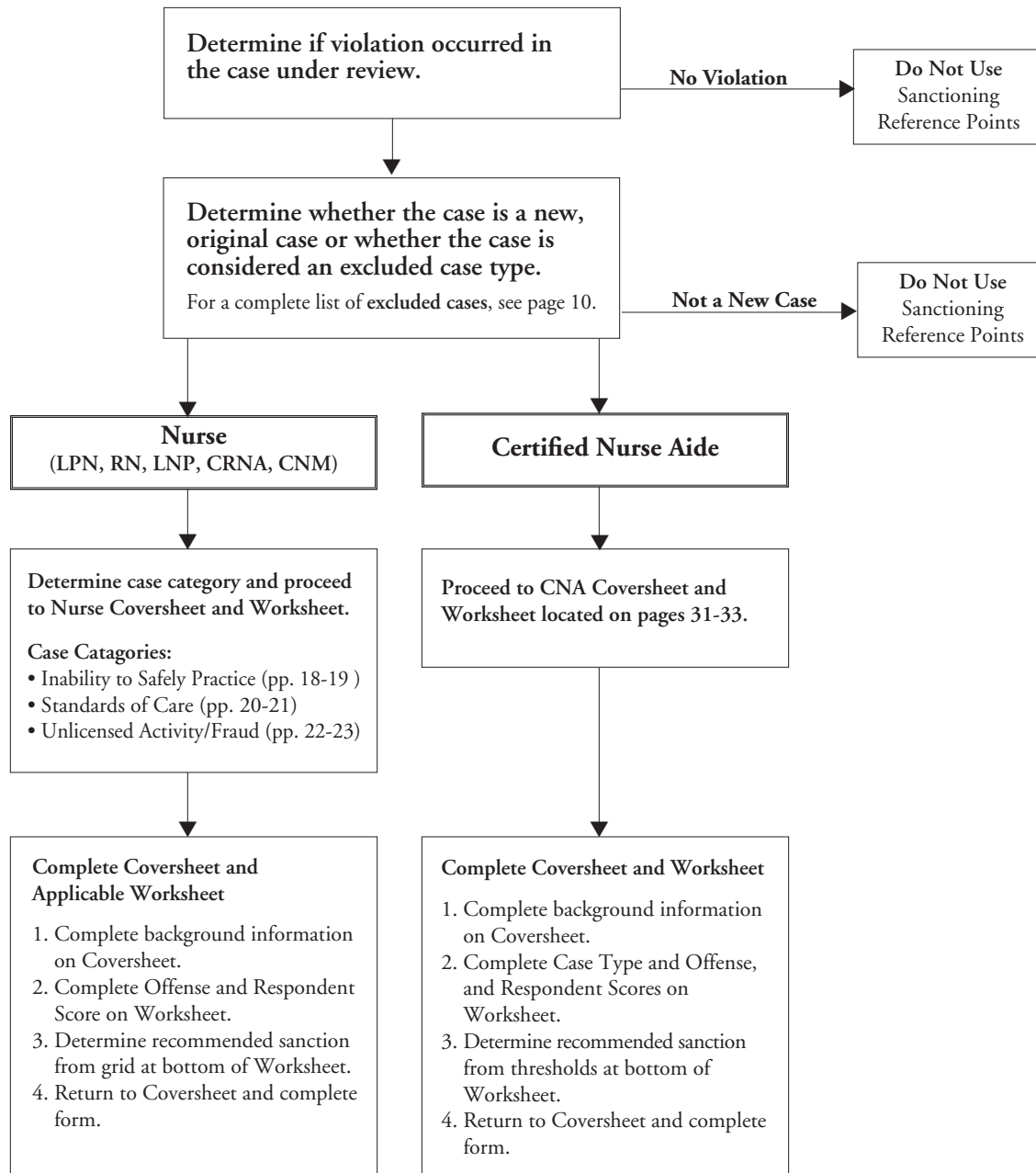
Robert A. Nebiker  
Director

Cordially,

A handwritten signature in black ink, appearing to read "Elizabeth A. Carter, Ph.D.".

Elizabeth A. Carter, Ph.D.  
Executive Director  
Virginia Board of Health Professions

## How to Use This Manual





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### Synopsis

The Virginia Board of Health Professions has spent the last 5 years studying sanctioning in disciplinary cases. The study is examining all health regulatory boards, with the greatest focus most recently on the Board of Nursing. The Board of Nursing is now in a position to implement the results of the research by using a set of voluntary *Sanctioning Reference Points*. This manual contains some background on the project, the goals and purposes of the system, and the four worksheets that will be used to help Board members determine how a similarly situated respondent has been treated in the past. This sanctioning system is based on a specific sample of cases, and thus only applies to those persons sanctioned by the Virginia Board of Nursing. Moreover, the worksheets have not been tested or validated on any other groups of persons. Therefore, they should not be used to sanction respondents coming before other health regulatory boards, other states, or other disciplinary bodies.

The sanctioning reference points were developed for the Board of Nursing by studying and evaluating respondents as two separate groups, nurses and certified nurse aides (CNA). The separate sample populations were chosen for two reasons.

First, the interview process made it clear that CNAs and Nurses were involved in different types of cases. For example, CNAs did not typically come in contact with prescription medication, therefore their cases tended to be patient related. Nurses were more often involved in drug and impairment cases.

Second, Nursing and CNA cases varied by the type of sanctions received by respondents. Perhaps most importantly, the Board of Nursing has additional adverse “Findings” available to them for sanctioning a CNA, including making findings of abuse, neglect, or misappropriation of patient property. When such a “Finding” is made by the Board, federal laws and regulations state that a CNA can no longer work in a federally funded long-term care facility. The functional effect is similar to losing one’s certificate, since CNA certification is required by law to work in that type of setting.

Because of the differences in Nurse and Nurse Aide cases and sanctioning, the sanctioning reference worksheets contained in this manual look different for each of the two groups. Nursing sanctioning reference points are comprised of a series of 3 case specific worksheets which score a number of offenses and respondent factors identified using statistical analysis. A two-dimensional grid found on each of the offense worksheets uses an offense score and a respondent score to indicate a historically-based range of sanctions from which the Board may select in a particular case.

For Nurse Aides, the Sanctioning Reference system uses a single worksheet that scores all case types and offense and respondent factors identified during statistical analysis. Three sanctioning thresholds found at the bottom of the CNA worksheet indicate the sanctions historically handed down by the Board for similarly situated respondents.

In addition to this instruction booklet, separate coversheets and worksheets are available to record the offense, respondent and/or case type scores, recommended sanction, actual sanction and any reasons for departure (if applicable). The completed coversheets and worksheets will be evaluated as part of an on-going effort to monitor and refine the Sanctioning Reference Points. These instructions and the

use of the Sanctioning Reference Points system fall within current Department of Health Professions policies and procedures and have been adopted as a guidance document by the Board of Nursing. Furthermore, all sanctioning recommendations are those currently available to and used by the Board and are specified within existing Virginia statutes.

## Background

In April of 2001, the Virginia Board of Health Professions (BHP) approved a work plan to conduct an analysis of health regulatory board sanctioning and to consider the appropriateness of developing historically-based sanctioning reference points for health regulatory boards, including the Board of Nursing (BON). The Board of Health Professions and project staff recognize the complexity and difficulty in sanction decision-making and have indicated that for any sanctioning reference system to be successful, it must be *“developed with complete Board oversight, be value-neutral, be grounded in sound data analysis, and be totally voluntary”*—that is, the system is viewed strictly as a Board decision tool.

## Goals

The Board of Health Professions and the Board of Nursing cite the following purposes and goals for establishing Sanctioning Reference Points:

- Making sanctioning decisions more predictable
- Providing an education tool for new Board members
- Adding an empirical element to a process that is inherently subjective
- Providing a resource for Board staff and attorneys (both sides)
- “Neutralizing” sanctioning inconsistencies
- Validating Board member or staff recall of past cases
- Constraining the influence of undesirable factors—e.g., Board member ID, overall Board makeup, race or ethnic origin, etc.
- Helping predict future caseloads and need for probation services and terms

## Methodology

The fundamental question when developing a sanctioning reference system is deciding whether the supporting analysis should be grounded in historical data (*a descriptive approach*) or whether it should be developed normatively (*a prescriptive approach*). A normative approach reflects what policymakers feel sanction recommendations should be, as opposed to what they have been. Sanctioning reference points can also be developed using historical data analysis with normative adjustments to follow. This approach combines information from past practice with policy adjustments, in order to achieve some desired outcome. The Board of Nursing chose a descriptive approach with a limited number of normative adjustments.

### ■ Qualitative Analysis

Researchers conducted in-depth personal interviews of past and current BON members, Board staff, and representatives from the Attorney General’s office. The interview results were used to build consensus regarding the purpose and utility of sanctioning reference points and to further frame the analysis. Additionally, interviews helped ensure the factors that Board members consider when sanctioning were included during the quantitative phase of the study. A literature review of sanctioning practice across the United States was also conducted.



## Methodology, continued

### ■ Quantitative Analysis

Researchers collected detailed information on all BON disciplinary cases ending in a violation between January 2002 and December 2004. For respondents holding a license to practice as a nurse, there were 294 sanctioning “events” covering 338 cases. For CNA’s, there were 301 “events” containing 329 cases. Over 100 different factors were collected on each case in order to describe the case attributes Board members identified as potentially impacting sanction decisions. Researchers used data available through the DHP case management system combined with primary data collected from hard copy files. The hard copy files contained investigative reports, Board notices, Board orders, and all other documentation that is made available to Board members when deciding a case sanction.

A comprehensive database was created to analyze factors that were identified as potentially influencing sanctioning decisions. Using statistical analysis to construct a “historical portrait” of past sanctioning decisions, the significant factors along with their relative weights were derived. These factors and weights were formulated into sanctioning worksheets and serve as the basis of the Sanctioning Reference Points.

Some factors were deemed inappropriate for use in the sanctioning reference system. For example, the presence of a respondent’s attorney, the respondent’s age or sex, and case processing time are all considered “extra-legal” factors, and were explicitly excluded from the sanctioning reference points. Although many factors, both “legal” and “extra-legal” can help explain sanction variation, only those “legal” factors the Board felt should *consistently* play a role in a sanction decision were included on the worksheets. By using this method, the hope is to achieve more consistency and neutrality in sanctioning, by making sure the Board considers the same set of “legal” factors in every case.

## Wide Sanctioning Ranges

The Sanctioning Reference Points weigh the circumstances of an offense and the relevant characteristics of the respondent, providing the Board with a sanction range that encompasses roughly 80% of historical practice. This means that about 20% of past cases had received sanctions either higher or lower than what the reference points indicate, acknowledging that aggravating and mitigating factors play a legitimate role in sanctioning. The wide sanctioning ranges recognize that the Board will sometimes reasonably disagree on a particular sanction outcome, but that a broad selection of sanctions fall within the recommended range.

Any sanction recommendation the Board derives from the Sanctioning Reference Points worksheets must fall within Virginia law and regulations. If a Sanctioning Reference Point worksheet recommendation is more or less severe than a Virginia statute or DHP regulation, the existing laws or policies supercede any worksheet recommendation.

## Voluntary Nature

The Sanctioning Reference Points system is a tool to be utilized by the Board of Nursing. Compliance with the Sanctioning Reference Points is voluntary. The Board will use the system as a reference tool and may choose to sanction outside the recommendation. The Board maintains complete discretion in determining the sanction handed down. However, a structured sanctioning system is of little value if the Board is not provided with the appropriate coversheet and worksheet in every

case eligible for scoring. A coversheet and worksheet should be completed in cases resolved by any informal conference including those conducted by special conference committees or agency subordinates. The coversheet and worksheets will be referenced by Board members during Closed Session including deliberations regarding decisions to offer consent orders.

### **Worksheets Not Used in Certain Cases**

The Sanctioning Reference Points will not be applied in any of the following circumstances:

**Formal Hearings** – Sanctioning Reference Points will not be used in cases that reach a Formal Hearing level.

**Mandatory Suspensions** – Virginia law requires that under certain circumstances (conviction of a felony, declaration of legal incompetence or incapacitation, license revocation in another jurisdiction) the license of a respondent must be suspended. The sanction is defined by law and is therefore excluded from the Sanctioning Reference Point system.

**Compliance/Reinstatements** – The Sanctioning Reference Points should be applied to new cases only.

**HPIP Non-compliance** – When a respondent was sanctioned to HPIP in a prior order the Sanctioning Reference Points are not used. *However, the Sanctioning Reference Points should be used when the Board's committee has voted to take no action or the respondent has been granted a stay contingent upon HPIP then does not comply with the HPIP program and both cases are brought forward into one proceeding.*

**Action by Another Board** – When a case which has already been adjudicated by a Board from another state appears before the Virginia Board of Nursing, the Board often attempts to mirror the sanctioning handed down by the other Board. The Virginia Board of Nursing usually requires that all conditions set by the other Board are completed or complied with in Virginia. The Sanctioning Reference Points do not apply as the case has already been heard and adjudicated by another Board.

# SANCTIONING REFERENCE POINTS

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**FOR**

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**NURSES**

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**ONLY**

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## Section 2: Sanctioning Reference Points for Nurses Only

### Case Types Covered by the Sanctioning Reference Points for Nurses Only

Three separate sanctioning reference point worksheets exist for Nursing cases. The factors scored on each worksheet are those which proved important in determining historical sanctions in past disciplinary cases.

When multiple cases have been combined into one “event” (one order) for disposition by the Board, only one sanctioning reference point worksheet is completed. In these instances, the worksheet completed is selected according to the case type group which appears highest on the following table. For example, a Nurse found in violation of both practicing on an expired license and patient deprivation would have their case scored on an Inability to Safely Practice worksheet, since Inability to Safely Practice is above Unlicensed Activity/Fraud on the table. If an offense type is not listed, find the most analogous offense type and use the appropriate scoring worksheet. This table is used for Nurses only. For this purpose, Nurses are meant to include: Licensed Practical Nurses, Registered Nurses, Licensed Nurse Practitioners, Certified Registered Nurse Anesthetists, Certified Nurse Midwives. This table does not apply to CNAs.

Nursing Case Type (sanctioning reference points worksheet)	Case Categories
Inability to Safely Practice	Use of Prescription Drugs Use of Illegal Substances Use of Alcohol Personal Use - On Duty Stealing Controlled Substances Patient Deprivation Drug Adulteration Drug Control Act Violation Prescription Forgery Incapacitation - Mental Condition/Illness Misdemeanor Conviction Drug Issue/Inability to Safely Practice - Other
Standards of Care	Treatment Related - Improper Performance of Procedure Treatment Related - Fail to Report Change in Condition Treatment Related - Other Prescription Related - Administration Error Prescription Related - Improper Management of Regimen Failure to Maintain Complete and Accurate Records Abuse, Neglect, Abandonment Relationship Inappropriate Boundary Violations Standard of Care - Other
Unlicensed Activity/Fraud	Practice on Lapsed/Expired License Aiding/Abetting Unlicensed Activity Practice Beyond Scope of License No Valid License-Not Qualified No Valid License-Qualified to Practice Practice on Revoked/Suspended License Falsification/Alteration of Documents Falsification of Licensing Documents Unlicensed Activity/Fraud - Other

### **Completing the Coversheet and Worksheets**

Ultimately, it is the responsibility of the BON to complete the sanctioning reference point coversheet and worksheet in all applicable cases.

The information relied upon to complete a coversheet and worksheet is derived from the case information provided to the Board and respondent. It is also possible that information discovered at the time of informal conference may impact worksheet scoring. The sanctioning reference point coversheet and worksheet, once completed, are confidential under the Code of Virginia. However, complete copies of the sanctioning reference point Manual, including blank coversheets and worksheets, can be found on the Department of Health Professions web site: [www.dhp.virginia.gov](http://www.dhp.virginia.gov). A paper copy is also available on request.

### **Worksheet Scoring**

Instructions for scoring each factor are contained adjacent to each worksheet in this manual. When scoring a worksheet, the scoring weights assigned to a factor on the worksheet *cannot be adjusted*; the scoring weights can only be applied as 'yes or no', with all or none of the points applied. In instances where a scoring factor is difficult to interpret, the Board has final say in how a case is scored.

### **Coversheet for Nurses Only**

The coversheet is completed to ensure a uniform record of each case and to facilitate recordation of other pertinent information critical for system monitoring and evaluation.

If the Board feels the sanction recommendation is not appropriate, the Board is encouraged to depart either high or low when handing down a sanction. If the Board disagrees with the sanction recommendation and imposes a sanction greater or less than the recommended sanction, a short explanation should be recorded on the coversheet. The explanation should identify the factors and the reasons for departure. This process will ensure worksheets are revised appropriately to reflect current Board practice. If a particular reason is continually cited, the Board can examine the issue more closely to determine if the worksheets should be modified to better reflect Board practice.

Aggravating and mitigating circumstances that may influence Board decisions can include, but should not be limited to, such things as:

- Severity of the incident
- Dishonesty/Obstruction
- Motivation
- Remorse
- Cause for the action
- Restitution/Self-corrective action
- Multiple offenses/Isolated incident

A space is provided on the coversheet to record the reason(s) for departure. Due to the uniqueness of each case, the reason(s) for departure may be wide-ranging. Sample scenarios are provided below:

**Departure Example #1**

Sanction Result: Recommend Formal.

Imposed Sanction: Probation with terms

*Reason(s) for Departure: Respondent was particularly remorseful and had already begun corrective action.*

**Departure Example #2**

Sanction Result: Reprimand/Monetary Penalty.

Imposed Sanction: Education/Monitoring - CE.

*Reason(s) for Departure: Respondent showed a lack of knowledge in a certain area.*

**Two Dimensional  
Sanctioning Grid for  
Nursing Cases**

The Board indicated early in the study that sanctioning is not only influenced by circumstances associated with the current case, but also by the respondent's past history. The empirical analysis supported the notion that both offense and respondent factors impacted sanction outcomes. To this end, the Sanction Reference Points for nursing make use of a two-dimensional scoring grid; one dimension assesses factors related to the instant offense, while the other dimension assesses factors related to the respondent.

**Determining a  
Specific Sanction**

The sanctioning grids on the sanctioning reference point worksheets contain four general sanctioning outcomes:

1. Recommend Formal/C.O. for Indefinite Suspension or Revocation
2. Education/ Monitoring
3. Reprimand/Monetary Penalty
4. No Sanction

The table on the following page lists the most frequently cited specific sanctions that fall under the four general outcomes. After considering the sanction grid result, the Board should articulate a specific sanction consistent with past Board policies and procedures.

### Sanctions Available for Nurses Only

Nursing Sanction Grid Result	Available Sanctions
Recommend Formal/C.O. for Indefinite Suspension or Revocation	Recommend Formal (revocation or suspension may result) C.O. for indefinite suspension or revocation C.O. to suspend or revoke privilege to renew C.O. for stayed suspension with terms
Education/Monitoring	Take No Action – contingent upon terms Probation with Terms Terms: <ul style="list-style-type: none"> <li>• continuing education - general or specific</li> <li>• continuing education - record keeping/documentation</li> <li>• continuing education - drug administration</li> <li>• HPIP (enter/continue)</li> <li>• quarterly self reports</li> <li>• inform Board of beginning or changing employment (10 days)</li> <li>• return license to receive stamped probation</li> <li>• written notification to employer/employees/associates</li> <li>• oversight by physician/LPN/RN</li> <li>• quarterly job performance evaluations</li> <li>• provide current/future treating practitioners with copy of order</li> <li>• supervised unannounced drug screens</li> <li>• impairment/incapacitation - evaluation</li> <li>• therapy with progress reports</li> <li>• shall abstain from the use of alcohol and drugs</li> <li>• shall be active in AA/NA/Caduceus/other</li> <li>• probation/parole officer send progress report to Board</li> <li>• drug administration - restrictions</li> <li>• practice restriction - specific</li> <li>• provide Board with final order placed on record by court</li> </ul>
Reprimand/Monetary Penalty	Reprimand Monetary Penalty
No Sanction	No Sanction



## Sanctioning Reference Points - Coversheet for NURSES ONLY

- Complete *Offense Score* section on the sanctioning reference point worksheet.
- Complete *Respondent Score* section on the sanctioning reference point worksheet.
- Determine the *Recommended Sanction* using the scoring results and the *Sanction Grid*.
- Complete this coversheet.

<b>Case Number(s)</b>	<table border="1" style="display: inline-table; width: 100%;"> <tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td></tr> </table> <table border="1" style="display: inline-table; width: 100%;"> <tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td></tr> </table> <table border="1" style="display: inline-table; width: 100%;"> <tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td></tr> </table>																		
<b>Respondent Name</b>	<div style="display: flex; justify-content: space-between; border-bottom: 1px solid black; padding-bottom: 5px;"> <span>First</span> <span>M. I.</span> <span>Last</span> </div>																		
<b>License Number(s)</b>																			
<b>Case Category</b>	<input type="checkbox"/> Inability to Safely Practice <input type="checkbox"/> Standards of Care <input type="checkbox"/> Unlicensed Activity/Fraud																		
<b>Sanction Grid Result</b>	<input type="checkbox"/> No Sanction to Reprimand/Monetary Penalty <input type="checkbox"/> Reprimand/Monetary Penalty <input type="checkbox"/> Reprimand/Monetary Penalty to Education/Monitoring <input type="checkbox"/> Education/Monitoring <input type="checkbox"/> Education/Monitoring to Recommend Formal/C.O. for Indefinite Suspension or Revocation <input type="checkbox"/> Recommend Formal/C.O. for Indefinite Suspension or Revocation																		
<b>Imposed Sanction</b>	<input type="checkbox"/> No Sanction <input type="checkbox"/> Reprimand <input type="checkbox"/> Monetary Penalty - enter amount \$ _____ <input type="checkbox"/> Take No Action - contingent on terms <input type="checkbox"/> Probation - duration in months _____ <input type="checkbox"/> Recommend Formal <input type="checkbox"/> C.O. to Suspend or Revoke Privilege to Renew <input type="checkbox"/> C.O. for Stayed Suspension with Terms <input type="checkbox"/> C.O. for Indefinite Suspension or Revocation <input type="checkbox"/> Other Sanction: _____ <input type="checkbox"/> Terms: _____																		
<b>Reasons for Departure from Sanction Grid Result:</b> _____																			
_____																			
_____																			
_____																			
_____																			
<b>Worksheet Preparer (name):</b> _____	<b>Date completed:</b> _____																		

## Inability to Safely Practice - Worksheet Instructions for NURSES ONLY

### Offense Score

#### Step 1:

*(score all that apply)*

Enter "20" if there are two or more concurrent founded violations during the same proceeding. This includes two or more cases against a respondent heard at the same time, with violations for each case.

Enter "20" if the respondent received a sanction from his/her employer in response to the current incident. A sanction from an employer may include, but is not limited to: suspension, termination, or disciplinary counseling notice.

Enter "20" if the respondent was unable to safely practice at the time of the offense due to substance abuse (alcohol or drugs) or mental/physical incapacitation.

Enter "20" if a patient was intentionally or unintentionally injured. Injury includes any physical injury, physical or sexual abuse, and death.

Enter "20" if the patient is especially vulnerable. Patients in this category must be at least one of the following: under age 18, over age 65, or mentally/physically handicapped.

Enter "15" if the offense involves a patient. Patient involvement is direct contact with a patient, patient neglect or boundary issues.

Enter "10" if the respondent intentionally overdosed on drugs or inflicted injury with the intent to commit suicide.

Enter "10" if this was an act of commission. An act of commission is interpreted as purposeful or with knowledge.

#### Step 2:

Combine all for **Total Offense Score**

### Respondent Score

#### Step 3:

*(score all that apply)*

Enter "30" if the respondent received a criminal conviction related to this offense.

Enter "20" if the respondent has any prior order(s) issued by the Virginia Board of Nursing finding them in violation.

Enter "20" if the Virginia Board of Nursing previously revoked, suspended, or summarily suspended the respondent's license.

Enter "20" if the respondent has previously been sanctioned by any *other* state or jurisdiction. Sanctioning by an employer is *not* scored here.

Enter "10" if the respondent has had any past difficulties in the following areas: drugs, alcohol, mental capabilities or physical capabilities. Scored here would be: prior convictions for DUI/DWI, inpatient/outpatient treatment, and bona fide mental health care for a condition affecting his/her abilities to function safely or properly.

Enter "5" if the respondent has had three or more employers in the past five years.

#### Step 4:

Combine all for **Total Respondent Score**

### Sanction Grid

#### Step 5:

Locate the Offense and Respondent scores within the correct ranges on the top and left sides of the grid. The cell where both scores intersect is the sanction recommendation.

*Example: If the Offense Score is 30 and the Respondent Score is 45, the recommended sanction is shown on the bottom center grid cell – "Education/Monitoring to Recommend Formal/C.O. for Indefinite Suspension or Revocation."*

#### Step 6: Coversheet

Complete the coversheet including the sanctioning reference point grid sanction result, the imposed sanction and the reasons for departure if applicable.

## Inability to Safely Practice - Worksheet for NURSES ONLY

Offense Score	Points	Score
Two or more concurrent founded cases . . . . .	20	_____
Concurrent sanction by employer . . . . .	20	_____
Impaired at the time of the incident . . . . .	20	_____
Patient injury . . . . .	20	_____
Patient vulnerability . . . . .	20	_____
Any patient involvement . . . . .	15	_____
Injury to self. . . . .	10	_____
Act of commission . . . . .	10	_____
		<b>Total</b>
		<b>Offense Score</b> <input type="text"/>

### Respondent Score

Concurrent criminal conviction . . . . .	30	_____
Any prior Board violations . . . . .	20	_____
License ever taken away . . . . .	20	_____
Been sanctioned by another state/entity . . . . .	20	_____
Past difficulties (substances, mental/physical) . . . . .	10	_____
Three or more employers in past 5 years. . . . .	5	_____
		<b>Total</b>
		<b>Respondent Score</b> <input type="text"/>

### Sanction Grid

Total Offense Score			
Total Respondent Score			
	0-25	26-45	46 or more
	<b>0-5</b> No Sanction ... to > Reprimand/ Monetary Penalty	Reprimand/Monetary Penalty ... to > Education/Monitoring	Education/Monitoring
	<b>6-40</b> Reprimand/Monetary Penalty ... to > Education/Monitoring	Education/Monitoring ... to > Recommend Formal/ C.O. for Indefinite Suspension or Revocation	Education/Monitoring ... to > Recommend Formal/ C.O. for Indefinite Suspension or Revocation
<b>41 or more</b>	Education/Monitoring	Education/Monitoring ... to > Recommend Formal/ C.O. for Indefinite Suspension or Revocation	Recommend Formal C.O. for Indefinite Suspension or Revocation

Grid cells give a single recommendation or a range of recommendations for imposing sanctions.

## Standard of Care - Worksheet Instructions for NURSES ONLY

### Offense Score

#### Step 1:

(score all that apply)

Enter "20" if a patient was intentionally or unintentionally injured. Injury includes any physical injury, physical or sexual abuse, and death.

Enter "20" if the patient is especially vulnerable. Patients in this category must be at least one of the following: under age 18, over age 65, or mentally/physically handicapped.

Enter "20" if the respondent received a sanction from his/her employer in response to the current violation. A sanction from an employer may include, but is not limited to: suspension, termination, or disciplinary counseling notice.

Enter "10" if this was an act of commission. An act of commission is interpreted as purposeful or with knowledge.

Enter "10" if the offense involves a patient. Patient involvement is direct contact with a patient, patient neglect, or boundary violations.

#### Step 2:

Combine all for **Total Offense Score**

### Respondent Score

#### Step 3:

(score all that apply)

Enter "30" if the respondent received a criminal conviction related to this offense.

Enter "20" if the respondent has any prior order(s) issued by the Virginia Board of Nursing finding them in violation.

Enter "20" if the Virginia Board of Nursing previously revoked, suspended, or summarily suspended the respondent's license.

Enter "20" if the respondent has previously been sanctioned by any *other* state or jurisdiction. Sanctioning by an employer is *not* scored here.

Enter "10" if the respondent has had any past difficulties in the following areas: drugs, alcohol, mental capabilities or physical capabilities. Scored here would be: prior convictions for DUI/DWI, inpatient/outpatient treatment, and bona fide mental health care for a condition affecting his/her abilities to function safely or properly.

Enter "10" if the respondent has had three or more employers in the past five years.

#### Step 4:

Combine all for **Total Respondent Score**

### Sanction Grid

#### Step 5:

Locate the Offense and Respondent scores within the correct ranges on the top and left sides of the grid. The cell where both scores intersect is the sanction recommendation.

*Example: If the Offense Score is 30 and the Respondent Score is 10, the recommended sanction is shown on the top left grid cell – "No Sanction to Reprimand/Monetary Penalty."*

#### Step 6: Coversheet

Complete the coversheet including the sanctioning reference point grid sanction result, the imposed sanction and the reasons for departure if applicable.

## Standard of Care - Worksheet for NURSES ONLY

Offense Score	Points	Score
Patient injury . . . . .	20	_____
Patient vulnerability . . . . .	20	_____
Concurrent sanction by employer . . . . .	20	_____
Act of commission . . . . .	10	_____
Any patient involvement . . . . .	10	_____
Total Offense Score		<input type="text"/>

### Respondent Score

Concurrent criminal conviction . . . . .	30	_____
Any prior Board violations . . . . .	20	_____
License ever taken away . . . . .	20	_____
Been sanctioned by another state/entity . . . . .	20	_____
Past difficulties (substances, mental/physical) . . . . .	10	_____
Three or more employers in past 5 years. . . . .	10	_____
Total Respondent Score		<input type="text"/>

### Sanction Grid

Total Offense Score				
		0-40	41-70	71 or more
Total Respondent Score	0-29	No Sanction ... to > Reprimand/ Monetary Penalty	Reprimand/Monetary Penalty	Reprimand/Monetary Penalty ... to > Education/Monitoring
	30 or more	Reprimand/Monetary Penalty	Education/Monitoring ... to > Recommend Formal/ C.O. for Indefinite Suspension or Revocation	Education/Monitoring ... to > Recommend Formal/ C.O. for Indefinite Suspension or Revocation

Grid cells give a single recommendation or a range of recommendations for imposing sanctions.

## Unlicensed Activity/Fraud - Worksheet Instructions for NURSES ONLY

### Offense Score

#### Step 1:

(score all that apply)

Enter "20" if the respondent received a sanction from his/her employer in response to the current violation. A sanction from an employer may include, but is not limited to: suspension, termination, or disciplinary counseling notice.

Enter "20" if a patient was intentionally or unintentionally injured. Injury includes any physical injury, physical or sexual abuse, and death.

Enter "20" if the patient is especially vulnerable. Patients in this category must be at least one of the following: under age 18, over age 65, or mentally/physically handicapped.

Enter "15" if the offense involves a patient. Patient involvement is direct contact with a patient, patient neglect, or boundary violations.

Enter "10" if the respondent's motivation for the violation included financial or material gain.

Enter "10" if this was an act of commission. An act of commission is interpreted as purposeful or with knowledge.

#### Step 2:

Combine all for **Total Offense Score**

### Respondent Score

#### Step 3:

(score all that apply)

Enter "30" if the respondent received a criminal conviction related to this offense.

Enter "20" if the respondent has any prior order(s) issued by the Virginia Board of Nursing finding them in violation.

Enter "20" if the Virginia Board of Nursing previously revoked, suspended, or summarily suspended the respondent's license.

Enter "20" if the respondent has previously been sanctioned by any *other* state or jurisdiction. Sanctioning by an employer is *not* scored here.

Enter "10" if the respondent has had any past difficulties in the following areas: drugs, alcohol, mental capabilities or physical capabilities. Scored here would be: prior convictions for DUI/DWI, inpatient/outpatient treatment, bona fide mental health care for a condition affecting his/her abilities to function properly.

Enter "10" if the respondent has had three or more employers in the past five years.

#### Step 4:

Combine all for **Total Respondent Score**

### Sanction Grid

#### Step 5:

Locate the Offense and Respondent scores within the correct ranges on the top and left sides of the grid. The cell where both scores intersect is the sanction recommendation.

*Example: If the Offense Score is 30 and the Respondent Score is 0, the recommended sanction is shown on the top left grid cell – "No Sanction to Reprimand/Monetary Penalty."*

#### Step 6: Coversheet

Complete the coversheet including the sanctioning reference point grid sanction result, the imposed sanction and the reasons for departure if applicable.

## Unlicensed Activity/Fraud - Worksheet for NURSES ONLY

Offense Score	Points	Score
Concurrent sanction by employer . . . . .	20	_____
Patient injury . . . . .	20	_____
Patient vulnerability . . . . .	20	_____
Any patient involvement . . . . .	15	_____
Financial/material gain . . . . .	10	_____
Act of commission . . . . .	10	_____
Total Offense Score		<input type="text"/>

Respondent Score	Points	Score
Concurrent criminal conviction . . . . .	30	_____
Any prior Board violations . . . . .	20	_____
License ever taken away . . . . .	20	_____
Been sanctioned by another state/entity . . . . .	20	_____
Past difficulties (substances, mental/physical) . . . . .	10	_____
Three or more employers in past 5 years. . . . .	10	_____
Total Respondent Score		<input type="text"/>

### Sanction Grid

Total Offense Score			
Total Respondent Score			
	0-30	31-50	51 or more
	0-29	30 or more	
	No Sanction ... to > Reprimand/ Monetary Penalty	Reprimand/Monetary Penalty	Reprimand/Monetary Penalty ... to > Education/Monitoring
	Reprimand/Monetary Penalty	Reprimand/Monetary Penalty ... to > Education/Monitoring	Education/Monitoring ... to > Recommend Formal/ C.O. for Indefinite Suspension or Revocation

Grid cells give a single recommendation or a range of recommendations for imposing sanctions.





# SANCTIONING REFERENCE POINTS

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**FOR**

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**NURSE AIDES**

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**ONLY**

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## Section 3: Sanctioning Reference Points for CERTIFIED NURSE AIDES ONLY

### **Case Types Included on Worksheets for CNAs Only**

A single sanctioning reference points worksheet is used to score all CNA disciplinary cases (unlike Nursing cases, which are scored on one of three different worksheets). For instructions on scoring and point values see pages 32-33 *Sanctioning Reference Points Worksheet Instructions – CNA Only*.

### **Completing the Coversheet and Worksheets**

Ultimately, it is the responsibility of the BON to complete the Sanctioning Reference Points coversheet and worksheet in all applicable cases.

The information relied upon to complete a coversheet and worksheet is derived from the case information provided to the Board and respondent. It is also possible that information discovered at the time of the informal conference may impact worksheet scoring. The Sanctioning Reference Points coversheet and worksheet, once completed, are confidential under the Code of Virginia. However, complete copies of the Sanctioning Reference Points Manual, including blank coversheets and worksheets, can be found on the Department of Health Professions web site: [www.dhp.virginia.gov](http://www.dhp.virginia.gov). A paper copy is also available on request.

### **Worksheet Scoring**

Instructions for scoring are contained adjacent to the worksheet in this section of the manual. Instructions are provided for each scoring factor on the worksheet and should be referenced to ensure accurate scoring. When scoring a case, the weights assigned to a factor on the worksheet *cannot be adjusted*. The scoring weights can only be applied as ‘yes or no’ with all or none of the points applied. In instances where a scoring factor is difficult to interpret, the Board has final say in how a case is scored.

### **Coversheet for CNAs Only**

The coversheet is completed to ensure a uniform record of each case and to facilitate recordation of other pertinent information critical for system monitoring and evaluation.

If the Board feels the sanction recommendation is not appropriate, the Board is encouraged to depart either high or low when handing down a sanction. If the Board disagrees with the sanction recommendation and imposes a sanction greater or less than the recommended sanction, a short explanation can be recorded on the coversheet. The explanation could identify the factors and the reasons for departure. This process will ensure the worksheet is revised appropriately to reflect current Board practice. If a particular reason is continually cited, the Board can examine the issue more closely to determine if the worksheet should be modified to better reflect Board practice.

### Coversheet for CNAs Only continued

Aggravating and mitigating circumstances that may influence Board decisions can include, but should not be limited to, such things as:

- Severity of the incident
- Dishonesty/Obstruction
- Motivation
- Remorse
- Cause for the action
- Restitution/Self-corrective action
- Multiple offenses/Isolated incident

A space is provided on the coversheet to record the reason(s) for departure. Due to the uniqueness of each case, the reason(s) for departure may be wide-ranging. Sample scenarios are provided below:

#### Departure Example #1

Threshold Level: Score of 90 points

Imposed Sanction: Reprimand

*Reason(s) for Departure: Act appeared accidental, respondent was particularly remorseful and had already begun corrective action.*

#### Departure Example #2

Sanction Result: Score of 40 points

Imposed Sanction: Finding of Abuse

*Reason(s) for Departure: Respondent continually lied through hearing and appeared impaired, represents danger to the community.*

### Sanctioning Thresholds for CNA Cases

The sanctioning reference points worksheet for CNAs allows a respondent to be assessed in two ways: the nature of the case (e.g., impairment vs. abuse or neglect) and the number of offense and respondent factors that are present. The board scores only one case type from the case type list (the most serious that occurred) and as many offense and respondent factors that are founded during case deliberations.

### Sanctions Available for CNAs Only

The CNA worksheet has three thresholds with increasing point values and respectively increasing sanction severities. The table here shows sanctions used by the Board in the past when sanctioning a certified nurse aide. The column to the left, *CNA Worksheet Sanction Threshold*, contains the threshold scores located at the bottom of the CNA worksheet. The column to the right *Available Sanctions* shows the specific sanction types that each threshold level covers.

CNA Worksheet Sanction Threshold	Available Sanctions
0-49	Reprimand No Sanction
50-79	Reprimand Take No Action contingent on terms Probation with terms Recommend Formal C.O. for Revocation C.O. to suspend or revoke privilege to renew C.O. for Suspension C.O. for Stayed Suspension with terms Finding of Abuse Finding of Neglect Finding of Misappropriation Terms: <ul style="list-style-type: none"> <li>• continuing education - general or specific</li> <li>• HPIP (enter/continue)</li> <li>• quarterly self reports</li> <li>• inform Board of beginning or changing employment (10 days)</li> <li>• return certificate to receive stamped probation</li> <li>• written notification to employer/employees/associates</li> <li>• oversight by physician/LPN/RN</li> <li>• provide current/future treating practitioners with copy of order</li> <li>• Supervised unannounced drug screens</li> <li>• impairment/incapacitation - evaluation</li> <li>• therapy with progress reports</li> <li>• shall abstain from the use of alcohol and drugs</li> <li>• shall be active in AA/NA/Caduceus/other</li> <li>• practice restriction - setting</li> <li>• practice restriction - specific</li> <li>• restitution to patient/other</li> <li>• probation/parole officer send progress report to Board</li> </ul>
80 and up	Recommend Formal C.O. for Revocation C.O. to Suspend or Revoke privilege to renew C.O. for Suspension C.O. for Stayed Suspension with terms Finding of Abuse Finding of Neglect Finding of Misappropriation



## Sanctioning Reference Points - Coversheet for CNAs ONLY

- Complete *Case Type Score* section on the sanctioning reference points Worksheet.
- Complete *Offense and Respondent Score* section on the sanctioning reference points Worksheet.
- Determine the *Recommended Sanction* using the scoring results and the *Sanction Threshold Levels*.
- Complete this coversheet.

<b>Case Number(s)</b>	<div style="display: flex; justify-content: space-around;"> <div style="border: 1px solid black; width: 40px; height: 20px;"></div> <div style="border: 1px solid black; width: 40px; height: 20px;"></div> <div style="border: 1px solid black; width: 40px; height: 20px;"></div> <div style="border: 1px solid black; width: 40px; height: 20px;"></div> <div style="border: 1px solid black; width: 40px; height: 20px;"></div> <div style="border: 1px solid black; width: 40px; height: 20px;"></div> </div> <div style="display: flex; justify-content: space-around; margin-top: 5px;"> <div style="border: 1px solid black; width: 40px; height: 20px;"></div> <div style="border: 1px solid black; width: 40px; height: 20px;"></div> <div style="border: 1px solid black; width: 40px; height: 20px;"></div> <div style="border: 1px solid black; width: 40px; height: 20px;"></div> <div style="border: 1px solid black; width: 40px; height: 20px;"></div> <div style="border: 1px solid black; width: 40px; height: 20px;"></div> </div> <div style="display: flex; justify-content: space-around; margin-top: 5px;"> <div style="border: 1px solid black; width: 40px; height: 20px;"></div> <div style="border: 1px solid black; width: 40px; height: 20px;"></div> <div style="border: 1px solid black; width: 40px; height: 20px;"></div> <div style="border: 1px solid black; width: 40px; height: 20px;"></div> <div style="border: 1px solid black; width: 40px; height: 20px;"></div> <div style="border: 1px solid black; width: 40px; height: 20px;"></div> </div>
<b>Respondent Name</b>	<div style="display: flex; justify-content: space-between; border-bottom: 1px solid black; padding-bottom: 5px;"> <span style="width: 40%;">First</span> <span style="width: 10%;">M. I.</span> <span style="width: 40%;">Last</span> </div>
<b>Certificate Number</b>	
<b>Sanction Threshold Level</b>	<input type="checkbox"/> 0-49 <input type="checkbox"/> 50-79 <input type="checkbox"/> 80 and up
<b>Imposed Sanction</b>	<input type="checkbox"/> No sanction <input type="checkbox"/> Reprimand <input type="checkbox"/> Take No Action with terms <input type="checkbox"/> Probation - duration in months _____ <input type="checkbox"/> C.O. for Revocation <input type="checkbox"/> C.O. to Suspend or Revoke privilege to renew <input type="checkbox"/> C.O. for Suspension <input type="checkbox"/> C.O. for Stayed Suspension with terms <input type="checkbox"/> Finding of Abuse <input type="checkbox"/> Finding of Neglect <input type="checkbox"/> Finding of Misappropriation <input type="checkbox"/> Recommend Formal <input type="checkbox"/> Other Sanction: _____ <input type="checkbox"/> Terms: _____ <div style="border-bottom: 1px solid black; height: 15px; margin-top: 5px;"></div>
<b>Reasons for Departure from Sanction Grid Result:</b> _____	
<b>Worksheet Preparer (name):</b> _____	<b>Date completed:</b> _____

## Sanctioning Reference Points - Worksheet Instructions for CNAs ONLY

### Case Type

#### Step 1:

*(score all that apply)*

Enter the point value that corresponds to the case type. If a case has multiple aspects, enter the point value for the one most serious case type that is highest on the worksheet's list. This is not referring to the sanction or finding aspect of the worksheet.

#### Abuse or Neglect, With Injury (score=70)

Physical Abuse with Injury  
Neglect with Injury

#### Impairment (score=50)

Use of Illegal Substance  
Use of Prescription Drugs  
Use of Alcohol  
Prescription Forgery  
Stealing Controlled Substances  
Incapacitation - Mental Condition/Illness  
Distribution/ Sale

#### Inappropriate Relationship (score=50)

Inappropriate/Unwanted Physical Contact  
Relationship – inappropriate  
Psychological Abuse  
Sexual Abuse  
Boundary Violation

#### Misappropriation of Property (score=50)

#### Abuse or Neglect, Without Injury (score=30)

Failure to Respond to Needs  
Physical Abuse without Injury  
Neglect without Injury  
Rough Handling  
Verbal Abuse  
Abuse/Neglect-Other

#### Verbally Inappropriate (score=10)

Rudeness  
Profanity  
Inappropriate comment

#### Standard of Care (score=10)

Improper Performance of Procedure  
Administration Error  
Practice Beyond Scope of Certification  
Abandonment  
Other

#### Fraud (score=10)

Falsification of Licensing Documents  
Falsification/Alteration of Documents  
(patient or employment related)  
Falsification of Renewal Documents

#### Step 2:

Enter Case Type Score

### Offense & Respondent Score

#### Step 3:

*(score all that apply)*

Enter “30” if the case involves substantial and imminent danger to the health and safety of the public (typically a Priority A case established at intake but can also be established during board deliberations).

Enter “30” if the respondent was unable to safely practice at the time of the offense due to substance abuse (alcohol or drugs) or mental/physical incapacitation.

Enter “20” if the respondent motivation for the violation included financial or material gain.

Enter “10” if the respondent has had a previously revoked, suspended, summarily suspended, or “finding” against their certificate (in any jurisdiction including VA).

Enter “10” if the respondent received a criminal conviction related to this offense.

Enter “10” if this was an act of commission. An act of commission is interpreted as purposeful or with knowledge.

Enter “10” if there are two or more concurrent founded violations during the same proceeding. This includes two or more cases against a respondent heard at the same time, with violations for each case.

Enter “10” if the patient is especially vulnerable. Patients in this category must be at least one of the following: under age 18, over age 65, or mentally/physically handicapped.

#### Step 4:

Combine all for Offense & Respondent Score

### Sanction Thresholds

#### Step 5:

*Add Step 2 & 4 for Total Worksheet Score*

Locate the Total Worksheet Score within the *Sanction Threshold Levels* table at bottom of worksheet. The score corresponds to one of three sanctioning reference point recommendations.

*Example: If the Case Type Score is 10 and the Offense/ Respondent Score is 20, the total worksheet score is 30. The recommended sanction is found in the first range, 0-40 “Reprimand.”*

#### Step 6: Coversheet

Complete the coversheet including the sanctioning reference point threshold result, the imposed sanction and the reasons for departure if applicable.



## Sanctioning Reference Points - Worksheet for CNAs ONLY

Case Type Score (score only one)	Points	Score
Abuse or neglect, with injury . . . . .	70	<input type="text"/>
Impairment . . . . .	50	<input type="text"/>
Inappropriate relationship . . . . .	50	<input type="text"/>
Misappropriation of property . . . . .	50	<input type="text"/>
Abuse or neglect, without injury . . . . .	30	<input type="text"/>
Verbally inappropriate . . . . .	10	<input type="text"/>
Standard of care . . . . .	10	<input type="text"/>
Fraud . . . . .	10	<input type="text"/>
<b>Case Type Score</b>		<input type="text"/>

Score Only ONE

Offense and Respondent Score (score ALL that apply)	Points	Score
Substantial or imminent danger to the public. . . . .	30	<input type="text"/>
Impaired at the time of the incident. . . . .	30	<input type="text"/>
Financial or material gain. . . . .	20	<input type="text"/>
Certificate ever taken away by any jurisdiction (including VA). . . . .	10	<input type="text"/>
Concurrent criminal conviction . . . . .	10	<input type="text"/>
Act of commission . . . . .	10	<input type="text"/>
Two or more concurrent founded cases . . . . .	10	<input type="text"/>
Patient vulnerability . . . . .	10	<input type="text"/>
<b>Offense and Respondent Score</b>		<input type="text"/>

Score ALL that apply

Total Score (Case Type + Offense and Respondent)	Score
	<input type="text"/>

### Sanction Thresholds

	Score
Reprimand No Sanction	0-49
Reprimand Terms or Probation Recommend Formal Finding of Abuse/Neglect/Misappropriation C.O. for Revocation or Suspension <i>with or without finding of</i> Abuse/Neglect/Misappropriation	50-79
Recommend Formal Finding of Abuse/Neglect/Misappropriation C.O. for Revocation or Suspension with or without Finding of Abuse/Neglect/Misappropriation	80 and up